

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CYRUS,	:	
	:	
Plaintiff,	:	No. 4:CV-08-1085
	:	
v.	:	(McClure, J.)
	:	
R. LAINO, et al.,	:	(Magistrate Judge Blewitt)
	:	
Defendants.	:	

**ORDER**

July 22, 2008

**BACKGROUND:**

On June 6, 2008, plaintiff John Cyrus, a prisoner at the Federal Correctional Institution at Allenwood, commenced this Bivens civil rights action. Cyrus asserts various claims against Health Services Administrator R. Laino, MTPN Weidlich, Corrections Officers Rasirio, Groover, and Dormant, and Lieutenant Bryant. All defendants are employed by the Bureau of Prisons at FCI-Allenwood. Plaintiff asserts various claims against these defendants, including claims under the First, Fifth, Eighth, and Fourteenth Amendments.

The matter was initially referred to United States Magistrate Thomas M. Blewitt. On June 30, 2008, the magistrate judge conducted an initial screening of the complaint pursuant to 28 U.S.C. § 1915(e)(2) and filed a twenty-four-page

report and recommendation. (Rec. Doc. No. 7.) In his report, the magistrate judge concluded that plaintiff stated an Eighth Amendment claim against Defendant Laino for his alleged failure to treat plaintiff's pain and for his alleged taking of plaintiff's nitroglycerine medication. (Rec. Doc. No. 7, at 7.) The magistrate judge also concluded that plaintiff stated an Eighth Amendment excessive force claim against defendants Laino, Weidlich, and Rosario, in that they allegedly stormed into his cell and "stuck an object up his nose which caused him to become unconscious." (Id.) Yet, the magistrate judge concluded that plaintiff's claims under the APA, the Bureau of Prison policies and regulations, and First, Fifth, and Fourteenth Amendment, all failed to state a claim. (Id. at 9-12, 19-21.) Furthermore, the magistrate judge recommended dismissal of defendants Groover, Dorman and Bryant for failure of plaintiff to state a claim against them. (Id. at 22.)

Neither plaintiff nor defendants have filed any objections to the magistrate judge's report and recommendation and the time for doing so has since passed. Because plaintiff and defendants have elected not to object to the report and recommendation and because we agree with the magistrate judge's analysis and recommendation, we will adopt the report and recommendation in full. For the purposes of judicial economy, we will not rehash the sound reasoning employed by the magistrate judge. We agree with the magistrate judge's thorough analysis and

will adopt the magistrate judge's report and recommendation in its entirety.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Plaintiff's motion for leave to proceed in forma pauperis (apparently not formally ruled upon by the magistrate judge) is granted (Rec. Doc. No. 2).
2. United States Magistrate Judge Thomas M. Blewitt's Report and Recommendation is adopted in full. (Rec. Doc. No. 7.)
3. Plaintiff's claims under the APA, the Bureau of Prison policies and regulations, and First, Fifth, and Fourteenth Amendment are dismissed for failure to state a claim.
4. The complaint is dismissed as to defendants Groover, Dorman and Bryant for failure of plaintiff to state a claim against them.
5. Plaintiff's Eighth Amendment medical care claim is permitted to proceed against defendant Laino.
6. Plaintiff's Eighth Amendment excessive force claim is permitted to proceed against defendants Laino, Weidlich, and Rasirio.
7. The clerk is directed to issue a summons and a copy of the complaint

to the United States Marshal's Service for service upon defendants Laino, Weidlich, and Rasirio.

8. The United States Marshal's Service is directed to effect service upon the defendants Laino, Weidlich and Rasirio in accordance with Rule 4 of the Federal Rules of Civil Procedure.
9. The case is remanded to the magistrate judge for further proceedings.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge